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No. 711

In the Supreme Court of the United States

OCTOBER TERM, 1968

VIDA JANE MCMANN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
MALCOLM R. WILKEY,
Assistant Attorney General,
BEATRICE ROSENBERG,
Attorney,
Department of Justice, Washington, D.C. 20530

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered December 10, 1959. A petition for rehearing was denied January 22, 1960. The petition for a writ of certiorari was filed February 17, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence supports petitioner's conviction.

STATEMENT

In the United States District Court for the Southern District of Texas, petitioner was convicted on counts 1, 2, 4, and 6 of an indictment (R. 274–275), charging in count 1 conspiracy to possess and utter counterfeit $100 bills (R. 28–32), in count 2 an attempt to utter a counterfeit bill (R. 32–33), in count 4 possession of a different bill (R. 34), and in count 6 concealment of still another bill (R. 35–36). She was given concurrent sentences of thirty months' imprisonment on counts 1, 2, and 4, and a suspended sentence of three years with five years' probation on count 6, that sentence to commence on release from imprisonment (R. 284–285). On appeal, the judgment was affirmed.

The evidence showed that on December 12, 1958, petitioner attempted to give a $100 bill for a small purchase in a Texas department store (R. 69). The store's cashier called the store detective (R. 78) who asked petitioner to accompany him to his office (R. 96). The detective asked petitioner if she had other bills and she gave him some which she had concealed in her shoes and dress (R. 97; count 3). Secret Service Agent Bertram, who had been summoned, questioned petitioner as to where she had obtained the bills, after informing her of her right to be silent (R. 174–175). She said that she had received the bills from a man named Capri in Chicago (R. 175). She told the agent that she had twenty more bills back of the mirror in her hotel room (R. 175, 180) and gave a written

consent to the search of the room (R. 180).[1] The bills were found there by another agent (R. 210; count 6).

The next day, petitioner told Bertram that she had received $1,000 in bills from Mr. Capri in November 1958 and had spent nine of them (R. 184); that she subsequently made an appointment to meet him with her friend, the co-defendant; that at that meeting she hinted she would like a mink stole; and that he gave her $5,000 for the stole, any balance to be divided by the two girls (R. 185–186). She refused to disclose the place where she lived in Chicago (R. 203). Petitioner said that on or about December 9, 1958, at Dallas, she had attempted to make a purchase at the A. Harris store in Dallas, but the bill was returned to her with the advice that the store could not cash it (R. 189). It was shown, as bearing on the issue of intent, that, when the clerk in Dallas returned the bill, she said that the cashier did not think it was a good one (R. 225–227).

Secret Service Agent Bertram, who had fifteen years' experience with counterfeit currency, testified that the bills at issue were counterfeit (R. 173, 176–178).

ARGUMENT

Petitioner's contentions, which all relate to the sufficiency of the evidence to support her conviction, present no issue of merit.

1. Petitioner argues (Pet. 10–12) that the bills were not shown to be counterfeit. However, an agent with fifteen years' experience in such matters testified that

[1] After a hearing out of the presence of the jury (R. 136–171), the trial judge denied a motion to suppress (R. 171), thus holding the consent to have been voluntary.

he had no doubt that the bills were counterfeit and that they were a poor printing job (R. 176–178). Petitioner made no attempt to question that testimony. The bills themselves were in evidence. The jury thus had ample basis on which to find the fact, which was not really in dispute at the trial, that the bills were counterfeit.

2. Petitioner also argues (Pet. 12–14) that there was an inadequate basis for finding that she knew the bills were counterfeit. The circumstances proved by the Government—the quantity discovered in her possession, the manner in which they were concealed, and the fact that one had been returned because it was not believed to be genuine—together justified the jury in inferring that petitioner knew the kind of bills which she had in her possession and was attempting to pass.

Petitioner claims that her exculpatory statement was uncontradicted. The judge charged the jury that the agent's testimony as to an exculpatory statement by petitioner that she believed the notes were genuine "raises a presumption as to the truth thereof; and to warrant a conviction, it is necessary that the Government prove beyond a reasonable doubt that such exculpatory statement was false" (R. 268–269). While this rule of the Fifth Circuit is more favorable to the defendant than is required, the circumstances recited above, which justified the jury in finding knowledge that the bills were counterfeited, fully warranted the jury in finding that the exculpatory denial of knowledge was false. Moreover, the jury could properly find that petitioner had been untruthful

in that part of her statement where she said that a bill had been returned to her in Dallas because the store did not have the change, when the evidence showed that it had been returned to her with the advice that it was not believed to be genuine. The jury could infer that a statement false in this respect was false in others as well, particularly since petitioner's version of the events in Chicago, as given to the agent, was not only unlikely, but was seriously impeached by the fact that she would not at the same time reveal her residence in Chicago.

The sufficiency of the evidence, upheld by both courts below, is not an issue warranting review by this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

MALCOLM R. WILKEY,
Assistant Attorney General.

BEATRICE ROSENBERG,
Attorney.

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